

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
EASTERN WASHINGTON REGION
STATE OF WASHINGTON

CONCERNED FRIENDS OF FERRY COUNTY
and DAVID L. ROBINSON,

Petitioners,

v.

FERRY COUNTY,

Respondent,

and

FUTUREWISE,

Intervenor.

Case No. 11-1-0003

**ORDER FINDING COMPLIANCE
[MINERAL RESOURCE LANDS]**

I. SYNOPSIS

On October 28, 2013, Ferry County adopted Ordinance No. 2013-03 amending Ferry County's Comprehensive Plan and Future Land Use Map to designate 479,373 acres of land as Agricultural Lands of Long-Term Commercial Significance, change its development regulations to add explanatory language about its agricultural areas, and designate approximately 1.4 million acres of land as Mineral Resource Lands of Long-Term Commercial Significance. On December 20, 2013, the Board held a Compliance Hearing in Republic, Washington. The Board finds and concludes that Ferry County is in compliance with the requirements of the Growth Management Act (GMA) relating to the designation and conservation of its resource lands and its Mineral Resource Lands of Long-Term Commercial Significance under RCW 36.70A.020, RCW 36.70A.030, RCW 36.70A.060, RCW 36.70A.070, and RCW 36.70A.170.

II. BURDEN OF PROOF

After the Board has entered a finding of non-compliance, the local jurisdiction is given a period of time to adopt legislation to achieve compliance.¹ After the period for compliance has expired, the Board is required to hold a hearing to determine whether the local jurisdiction has achieved compliance.² For purposes of Board review of the comprehensive plans and development regulations adopted by local governments in response to a non-compliance finding, the presumption of validity applies and the burden is on the challenger to establish that the new adoption is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of the GMA.³

In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made."⁴

Within the framework of state goals and requirements, the Board must grant deference to local governments in how they plan for growth:

In recognition of the broad range of discretion that may be exercised by counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter, the legislature intends for the boards to grant deference to the counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

RCW 36.70A.3201 (in part).

In sum, during compliance proceedings the burden remains on the Petitioner to overcome the presumption of validity and demonstrate that any action taken by the County is clearly erroneous in light of the goals and requirements of chapter 36.70A RCW (the

¹ RCW 36.70A.300(3)(b).

² RCW 36.70A.330(1) and (2).

³ RCW 36.70A.320(1), (2), and (3).

⁴ *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

1 Growth Management Act).⁵ Where not clearly erroneous and thus within the framework of
2 state goals and requirements, the planning choices of the local government must be granted
3 deference.

4 5 **III. PROCEDURAL HISTORY**

6 The Petition for Review was filed on October 7, 2011.

7 On December 17, 2012, the Growth Management Hearings Board issued its Final
8 Decision and Order finding Ferry County not in compliance with the requirements of the
9 GMA relating to the designation of Mineral Resource Lands of Long-Term Commercial
10 Significance under RCW 36.70A.070 and RCW 36.70A.170 and relating to policies and
11 development standards for resource lands under RCW 36.70A.060, RCW 36.70A.070, and
12 RCW 36.70A.120.

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14 A Compliance Hearing was held on December 20, 2013, in Republic, Washington
15 with the Eastern Washington Regional Panel comprised of Presiding Officer Raymond L.
16 Paolella and Board Members Chuck Mosher and Margaret Pageler (present by telephone).
17 In attendance at the Hearing on the Merits were: attorney Tim Trohimovich, representing
18 Concerned Friends of Ferry County, David L. Robinson, and Futurewise; Deputy
19 Prosecuting Attorney L. Michael Golden, representing Respondent Ferry County; David L.
20 Robinson; and Ferry County Planning Director Irene Whipple.

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22 The Compliance Hearing addressed compliance in three cases: Case No. 97-1-
23 0018c (Critical Areas Ordinance), Case No. 01-1-0009 (Agricultural Resource Lands), and
24 the present case - Case No. 11-1-0003 (primarily concerning Mineral Resource Lands). On
25 February 14, 2014, the Growth Management Hearings Board issued an Order Finding
26 Compliance [Agricultural Resource Lands] in GMHB Case No. 01-1-0019. That matter
27 involved the acreage of agricultural lands to be designated. The agricultural lands issues
28 remaining to be resolved in the present case concern comprehensive plan policies and
29 mapping of such agricultural lands.
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⁵ RCW 36.70A.320(2).

IV. DISCUSSION AND ANALYSIS

In this case, Petitioners challenge Ferry County's October 28, 2013, adoption of Ordinance No. 2013-03 pertaining to Mineral Resource Lands of Long-Term Commercial Significance. In Petitioners' brief filed in this case, they stipulate to the County's compliance in the agricultural lands issues. Petitioners state they "agree that Ferry County has now properly readopted the narrative, policies, and development regulations to describe and protect agricultural lands of long-term commercial significance . . . and [s]o we concur the County should be found in compliance on these questions."⁶ Petitioners continue to contest the County's designation of mineral resource lands.

Applicable Law

Under RCW 36.70A.070, the Comprehensive Plan shall be an internally consistent document and all elements shall be consistent with the future land use map. The term "consistency" has been defined as follows: "Consistency means comprehensive plan provisions are compatible with each other. One provision may not thwart another."⁷

The GMA requires Ferry County to designate "[m]ineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals."⁸ These mineral land designations were required to be adopted on or before September 1, 1991.

The GMA also requires Ferry County to "adopt development regulations on or before September 1, 1991, to assure the conservation of . . . mineral resource lands."⁹

WAC 365-190-070 provides the "Minimum Guidelines" and criteria that must be considered when designating Mineral Resource Lands:

(1) In designating mineral resource lands, counties and cities must approach the effort as a county-wide or regional process, with the exception of owner-initiated requests for designation. Counties and cities should not review

⁶ Concerned Friends of Ferry County's, David L. Robinson's, and Futurewise's Concurrence In and Objections to a Finding of Compliance, pp. 2-3 (November 26, 2013).

⁷ *Five Mile Prairie Neighborhood Association v. Spokane County*, GMHB Case No. 12-1-0002, Final Decision and Order (August 23, 2012), at 10.

⁸ RCW 36.70A.170(1)(c).

⁹ RCW 36.70A.060(1)(a).

1 mineral resource lands designations solely on a parcel-by-parcel basis.

2 (2) Counties and cities must identify and classify mineral resource lands from
3 which the extraction of minerals occurs or can be anticipated. Counties and
4 cities may consider the need for a longer planning period specifically to
5 address mineral resource lands, based on the need to assure availability of
6 minerals for future uses, and to not inadvertently preclude access to
7 available mineral resources due to incompatible development. Other
8 proposed land uses within these areas may require special attention to
9 ensure future supply of aggregate and mineral resource material, while
10 maintaining a balance of land uses.

11 (3) Classification criteria.

12 (a) Counties and cities classify mineral resource lands based on geologic,
13 environmental, and economic factors, existing land uses, and land
14 ownership. It is expected that mineral resource lands will be depleted of
15 minerals over time, and that subsequent land uses may occur on these lands
16 after mining is completed. Counties and cities may approve and permit land
17 uses on these mineral resource lands to occur after mining is completed.

18 (b) Counties and cities should classify lands with potential long-term
19 commercial significance for extracting at least the following minerals: Sand,
20 gravel, and valuable metallic substances. Other minerals may be classified
21 as appropriate.

22 (c) When classifying these areas, counties and cities should use maps and
23 information on location and extent of mineral deposits provided by the
24 department of natural resources, the United States Geological Service and
25 any relevant information provided by property owners. Counties and cities
26 may also use all or part of a detailed minerals classification system
27 developed by the department of natural resources.

28 (d) Classifying mineral resource lands should be based on the geology and
29 the distance to market of potential mineral resource lands, including:

30 (i) Physical and topographic characteristics of the mineral resource site,
31 including the depth and quantity of the resource and depth of the overburden;

32 (ii) Physical properties of the resource including quality and type;

(iii) Projected life of the resource;

1 (iv) Resource availability in the region; and

2 (v) Accessibility and proximity to the point of use or market.

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4 (e) Other factors to consider when classifying potential mineral resource
5 lands should include three aspects of mineral resource lands:

6 (i) The ability to access needed minerals may be lost if suitable mineral
7 resource lands are not classified and designated; and

8 (ii) The effects of proximity to population areas and the possibility of more
9 intense uses of the land in both the short and long-term, as indicated by the
10 following:

11 (A) General land use patterns in the area;

12 (B) Availability of utilities, including water supply;

13 (C) Surrounding parcel sizes and surrounding uses;

14 (D) Availability of public roads and other public services; and

15 (E) Subdivision or zoning for urban or small lots.

16 (iii) Energy costs of transporting minerals.

17 (4) Designation of mineral resource lands.

18 (a) Counties and cities must designate known mineral deposits so that
19 access to mineral resources of long-term commercial significance is not
20 knowingly precluded. Priority land use for mineral extraction should be
21 retained for all designated mineral resource lands.

22 (b) In designating mineral resource lands, counties and cities should
23 determine if adequate mineral resources are available for projected needs
24 from currently designated mineral resource lands.

25 (c) Counties and cities may consult with the department of transportation and
26 the regional transportation planning organization to determine projected
27 future mineral resource needs for large transportation projects planned in
28 their area.
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1 (d) In designating mineral resource lands, counties and cities must also
2 consider that mining may be a temporary use at any given mine, depending
3 on the amount of minerals available and the consumption rate, and that other
4 land uses can occur on the mine site after mining is completed, subject to
5 approval.

6 (e) Successful achievement of the natural resource industries goal set forth
7 in RCW 36.70A.020 requires the conservation of a land base sufficient in
8 size and quality to maintain and enhance those industries and the
9 development and use of land use techniques that discourage uses
10 incompatible with the management of designated lands.

11 **Board Analysis and Findings**

12 In the December 17, 2012, Final Decision and Order, the Board found Ferry County
13 Ordinance No. 2011-04 created an internal inconsistency in the Comprehensive Plan
14 because designation of the entire land area of Ferry County as Mineral Resource Lands is
15 not consistent with designating just existing mining operations subject to DNR permits – a
16 large land area would be included as Mineral Resource Lands under one part of the
17 Comprehensive Plan while at the same time be excluded from Mineral Resource Lands
18 under a different part of the Comprehensive Plan. Furthermore, the Board found Ordinance
19 No. 2011-04 contained no map showing the location of Mineral Resource Lands, contrary to
20 the GMA requirement that a Comprehensive Plan shall consist of a map or maps, together
21 with descriptive text.

22 On October 28, 2013, Ferry County adopted Ordinance No. 2013-03 in an attempt to
23 achieve compliance with the Growth Management Act pertaining to Agricultural Lands of
24 Long-Term Commercial Significance and Mineral Resource Lands of Long-Term
25 Commercial Significance by adopting *inter alia* the following Comprehensive Plan
26 amendments:
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- 28 • The table entitled “Designated Resource Lands” has been amended to remove
29 the Urban Growth Area of the City of Republic from the Mineral Resource Lands
30 designation.¹⁰
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¹⁰ Ferry County Ordinance No. 2013-03, p. 2 (October 28, 2013).

- Natural Resource Policy 9 has been revised to delete the previous inconsistent language designating just “existing mining operations subject to DNR permits on the County’s future land use maps.”¹¹
- Ferry County’s Comprehensive Plan and Future Land Use Map designates 479,373 acres of land as Agricultural Lands of Long-Term Commercial Significance.¹²
- Ferry County’s Comprehensive Plan and Future Land Use Map designates approximately 1.4 million acres of land as Mineral Resource Lands of Long-Term Commercial Significance.¹³

Moreover, Ordinance No. 2013-03, Comprehensive Plan Section 7.4.39, discusses the unique aspects of Mineral Resources in Ferry County:

Ferry County has a unique geologic history. Epithermal precious-metal deposits in the Eocene Sanpoil Volcanics in the Republic graben have been targeted by several mineral exploration companies. More than 2.5 million ounces of gold have been produced from epithermal deposits in the Republic area since 1896. Exploration continues and new ore deposits continue to be discovered.

The ancient lake beds of the Eocene Klondike Mt. Formation overlie the heavily mineralized Sanpoil Volcanics. These sediments have yielded many fossils of plants, fish, and insects and are known as the world’s richest source of Eocene temperate climate plant fossils. Outcrops in Republic have produced many previously unknown plant taxa and contain valuable evidence of past environmental conditions and plant adaptations.

Since the fossil bearing lake sediments were deposited in the Republic Graben’s lowlands, it is reasonable to assume that additional fossils exist in graben. It is likely that increased exposure of the Klondike Mt. formation by development and mineral exploration will reveal new fossil locations.¹⁴

Based on a review of Ordinance No. 2013-03 and the evidence in the record, the Board finds and concludes that Ferry County has adequately addressed the areas of non-

¹¹ *Id.* at pp. 3-4.

¹² *Id.* at p. 2; future land use map page 6.

¹³ *Id.*; future land use map p. 7.

¹⁴ *Id.* at p. 9.

1 compliance found in the December 17, 2012, Final Decision and Order.

2 As to Ordinance No. 2013-03, Petitioners now assert: (1) there is no evidence that
3 the County conducted an analysis sufficient to show compliance with the GMA criteria for
4 mineral resource lands sufficient to designate the entire county, and (2) the "Designated
5 Resource Lands" violates RCW 36.70A.070's requirement that the comprehensive plan is
6 internally consistent and RCW 36.70A.040's requirement that the development regulations
7 shall be consistent with and implement the comprehensive plan.¹⁵
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9 However, Petitioners failed to adduce facts or point to anything in the record
10 demonstrating non-compliance with the GMA criteria for designating mineral resource
11 lands.¹⁶ Petitioners also failed to adduce facts necessary to controvert the County's
12 determinations in Ordinance No. 2013-03 regarding Mineral Resource Lands of Long-Term
13 Commercial Significance. Petitioners failed to identify specific internal language
14 inconsistencies within the Comprehensive Plan and did not demonstrate that any language
15 in the development regulations is inconsistent with language in the Comprehensive Plan.
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17 Therefore, the Board finds and concludes the Petitioners failed to come forward with
18 sufficient evidence in the record to satisfy Petitioners' burden to prove that Ferry County
19 Ordinance No. 2013-03 is clearly erroneous in view of the entire record before the Board
20 and in light of the goals and requirements of the Growth Management Act.
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22 V. ORDER

23 Ferry County is in compliance with the requirements of the Growth Management Act
24 relating to both the designation and conservation of resource lands and the designation and
25 conservation of Mineral Resource Lands of Long-Term Commercial Significance under
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28 ¹⁵ Concerned Friends of Ferry County's, David L. Robinson's, and Futurewise's Concurrence In and
29 Objections to a Finding of Compliance, pp. 5-6 (November 26, 2013).

30 ¹⁶ For an analogous dispute over a broad-scale designation, see *Hood Canal v. Kitsap County*, CPSGMHB
31 Case No 06-1-0012c, Final Decision and Order (August 28, 2006), at 29-31, affirm'd, *KAPO v. CPSGMHB*,
32 160 Wn.App. 250 (2011). Kitsap County's 2005 CAO update classifying **all** its marine shorelines as fish and
wildlife habitat conservation areas was challenged by property owners. The Board found the blanket
designation was appropriate given the unique circumstances of the Kitsap Peninsula, state and federal agency
habitat mapping specific to Kitsap shorelines, and other studies and documents in the record, which petitioners
failed to contravene by competent evidence.

1 RCW 36.70A.020, RCW 36.70A.030, RCW 36.70A.060, RCW 36.70A. 070, and RCW
2 36.70A.170. This case is closed.

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4 Entered this 20th day of February, 2014.
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Raymond L. Paoella, Board Member

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Charles Mosher, Board Member

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Margaret Pageler, Board Member
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16 **Note: This is a final decision and order of the Growth Management Hearings Board**
17 **issued pursuant to RCW 36.70A.300.¹⁷**

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¹⁷ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
31 parties within ten days of mailing of the final order. WAC 242-03-830(1), -840. A party aggrieved by a final
32 decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW
34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to
review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized
to provide legal advice.